

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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IN RE AIR CARGO SHIPPING SERVICES  
ANTITRUST LITIGATION

MDL No. 1775

ORDER  
06-MD-1775 (JG)(VVP)

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JOHN GLEESON, United States District Judge:

On September 26, 2008, Judge Viktor Pohorelsky filed his Report and Recommendations ('R&R) as to five motions to dismiss filed by the defendants. On August 21, 2009, I issued an order adopting, with one exception, Judge Pohorelsky's R&R, thereby denying in part and granting in part the defendants' motion to dismiss. In adopting Judge Pohorelsky's R&R, I rejected defendants' arguments that (1) the Foreign Trade Antitrust Improvements Act of 1983 ('FTAIA'), 15 U.S.C. § 6a deprived this Court of subject matter jurisdiction to hear the plaintiff's Sherman Act claims that arise from purchases of air cargo services for shipments from foreign countries to the United States (the 'foreign-purchase claims') and (2) the foreign-purchase claim plaintiffs lacked standing to bring such claims. I did not adopt Judge Pohorelsky's recommendation to dismiss, with leave to replead, the plaintiff's foreign-purchase claims. Accordingly, I denied the defendants' motion to dismiss the Sherman Act claims. On September 4, 2009, the foreign-purchase claim defendants filed a motion for certification for an interlocutory appeal of my order under 28 U.S.C. § 1292(b).<sup>1</sup> On September 25, 2009, the

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<sup>1</sup> The defendants who join in this motion: Aerolineas Brasileiras S.A. d/b/a ABSA Cargo Airline, Air Canada, AC Cargo LP, Air China Ltd., Air China Cargo Co., Ltd., Air New Zealand Limited, Alitalia Linee Aeree Italiane, S.p.A., All Nippon Airways Co., Ltd., Asiana Airlines, Inc., Atlas Air Worldwide Holdings, Inc., British Airways, Plc, Cargolux Airlines International S.A., Cathay Pacific Airways Ltd., El Al Israel Airlines Ltd., Emirates, Japan Airlines International Co., Ltd., KLM Royal Dutch Airlines, Korean Airlines Co., Ltd., LAN Airlines S.A., LAN Cargo S.A., Martinair Holland N.V., Nippon Cargo Airlines Co., Ltd., Polar Air Cargo LLC, Qantas Airways Ltd., Saudi Arabian Airlines, Ltd., Scandinavian Airlines System, Singapore Airlines Cargo Pte Ltd., Singapore Airlines Limited, Société Air France, South African Airways Limited and Thai Airways International Public Company Ltd.

plaintiffs filed an opposition to the motion for certification. I heard oral argument on October 2, 2009.

As I find that that this appeal would not “materially advance the ultimate termination of the litigation,” *see 28 U.S.C. § 1292(b)*, the defendants’ application is denied.

So ordered.

John Gleeson, U.S.D.J.

Dated: October 20, 2009  
Brooklyn, New York

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